



**ELECTRONIC FRONTIER FOUNDATION**

Protecting Rights and Promoting Freedom on the Electronic Frontier

December 9, 2013

Honorable Liam O'Grady  
United States District Judge  
Albert F. Bryan U.S. Courthouse  
401 Courthouse Square  
Alexandria, VA 22314

**Re: *United States v. Kim Dotcom, et al., Case No. 1:12-cr-00003***

Dear Judge O'Grady:

We write on behalf of our client, Kyle Goodwin, and in response to the December 4, 2013 letter from Megaupload's counsel ("Megaupload Ltr.") and the December 6, 2013 government filing entitled Government's Response to Letter of December 4, 2013 (Dkt. No. 187) ("Gov't Br.") to ask the court to ensure that Mr. Goodwin, along with other Megaupload users, receives the same "notice and confer" assistance that the government is apparently now seeking to provide to the other "potential victims" in the criminal case.

As this court is aware, Mr. Goodwin, like millions of others, used Megalupload to store files of all kinds and lost access to those files when the government seized the servers in January of 2012. In a very real sense these individuals are victims of the government's seizure, or at the very least, they are collateral damage. Mr. Goodwin has also now waited for nearly two years to obtain access to his data; he has filed at least six requests. *See, e.g.*, Dkt. Nos. 51, 91, 131, 135, 162, 177. Moreover, more than a year has passed since Mr. Goodwin filed a proposal for a hearing under Rule 41(g) of the Federal Rules of Criminal Procedure, in response to a request from this Court. Dkt. No. 135.

In its December 6, 2013 response, the government informed the court as follows:

The government has identified many alleged victims of the "Mega Conspiracy" over the past several years of its investigation (some of which is detailed in the materials already provided to the defendants), but the government needs to make its best efforts to notify and confer with as many potential victims in the criminal case as possible. Given the size and scope of Megaupload's operations, it is appropriate for the government to seek guidance from the Court about its responsibilities to appropriately address victim rights.

Gov't Br. at 5. While we appreciate the government's intent to appropriately address victim rights, we submit that the court should also ensure that the rights of the many users

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of the service who have lost their property but who have not been accused of copyright infringement, including Mr. Goodwin, are also addressed in any next steps in this case.

While further specificity is impossible given the narrow window of unsealed information provided, if the government and this Court agreed that victim rights should be addressed, it should also ensure that the deprivation of property suffered by all those similarly situated to Mr. Goodwin is likewise addressed.

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Very truly yours,

A handwritten signature in black ink, appearing to read "Julie P. Samuels". The signature is fluid and cursive, with the first name "Julie" being more prominent.

Julie P. Samuels

Counsel for Kyle Goodwin

cc: William A. Burck, counsel for Kim Dotcom and Megaupload  
Ira Rothken, counsel for Kim Dotcom and Megaupload  
Jay V. Prabhu, Assistant United States Attorney, counsel for the United States  
Marc J. Zwillinger, counsel for Carpathia Hosting, Inc.  
Paul M. Smith & Julie M. Carpenter, counsel for Motion Picture Association of America  
W. Clifton Holmes, counsel for Valcom, Inc. and Microhits, Inc.